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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,141	04/09/2001	John W. Chrisman III	4826US	8520
7590 09/29/2005			EXAMINER	
BRICK G. POWER TRASK, BRITT & ROSSA LAW OFFICES P.O. BOX 2550 SALT LAKE CITY, UT 84110			PIERCE, WILLIAM M	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/832,141

Applicant(s)

CHRISMAN, JOHN W.

Examiner

William M. Pierce

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5, 7, 9-27, 29 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 9-27, 29 and 31-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

WILLIAM M. PIERCE  
PRIMARY EXAMINER

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3, 5, 7, 9-27, 29 and 31-33 are rejected under 35 U.S.C. 102(a) as being anticipated by Article For That Sweet Smell Of Success, Some Try Scented Bowling Balls.

While that article was printed 3/14/2005, it states that scented bowling balls were known 15 year prior. "Storm's made a pretty steady climb the last 10 years or...his company could have added scent-it developed the technology about 15 years ago...but chose not to...Ebonite, says his company also experimented with scent and "didn't think it was worth the effort". by \*\*\*.

### ***Claim Rejections - 35 USC § 103***

Claims 1-3, 5, 7, 8, 10-27, 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over what is old and well known in bowling balls in view of Shibantai.

As to claims 1-3, 5, 7, 10-19, 20-27, 29 and 31, bowling balls of nonporous polymeric thermosetting resin is old and well known. This is admitted old at the bottom of pg. 2 of Appellant's specification. Lacking in bowling balls is the use of a fragrance. However, perfumed polymers intended for the purpose of making plastic articles with a fragrance are also well known. Shibantai teaches compounds to be included in synthetic resin products in order to enhance their smell. While there is no direct teaching of using his compound in a bowling ball, it has been held that, in evaluating a reference, it is proper to take into account not only the specific teaching of the reference(s) but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). Additionally, one must observe that an artisan must be presumed to know something about the art apart from what the references disclose (see In re Jacoby, 309 F.2d, 513, 516, 135 USPQ 317, 319 (CCPA 1962). In line with this, one skilled in the art would clearly have found it obvious to have applied perfumed compounds, such as Shibantai's in order to make a bowling ball smell better. Where the claims call for a two-part resin and the fragrance being dissolved therein, Shibantai directly teaches that "it is also possible to mix perfume...with a synthetic resin compound followed by molding" (col. 1, ln. 26) but that this "direct addition of

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perfume...to synthetic resin compound is not as effective as it seems" (col. 1, 35). Hence Shibanaï goes on to teach an improved more effective method of adding fragrance to a product that includes forming an inclusion compound consisting of perfume included in cyclodextrin. While Shibanaï does not detail the old and known methods of "mixing perfume" and "direct addition of perfume" that is at least partially dissolved within the resin, such are considered old when one further considers Coffey et al. as an example. Coffey teaches that it is an old expedient and would have been obvious to mix fragrances to two part resins in the forming of a fragrances polymer product. Edwards and Wilbert, are further examples of direct mixing of fragrances with a polyurethane prior to molding. The art is replete with the successful addition of fragrance to two part polymer products. The motivation is simply to "impart to other polymeric products pleasant odors" (Wilbert, col.1, ln. 57).

The amount of fragrance as called for in claim 8 is considered and obvious matter of choice depending upon how strong of a smell is desired.

Claims 9, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over bowling balls in view of Shibanaï and further in view of Anderson.

Applying a pigment to polymer resin products to give them color is old and well known. Anderson teaches that it is old to apply a color that correlates to a fragrance in a product. To have done so with a bowling ball would have been obvious to one skilled in the art for the novelty.

The examiner has considered the Declaration of John Chrisman and has determined that the commercial success of the Storm bowling ball has not been shown to be linked to the claimed invention. First, the "scent" has been referred to as a "gimmick" which is in all likelihood linked to a heavy advertising and promotional budget. Nothing of record shows that the increased sales in 2001 for Storm was not linked to greater promotion or endorsements of its products rather than to the scenting of the balls itself. Non-obviousness is not shown by a brilliant marketing strategy that includes press releases and recognition from the novelty of the ball. Second, the balls of Storm sell because they perform well. Examiner is not convinced that top bowlers would buy the Storm ball merely because it smells good. It the top performance characteristics of the ball that is attributed to the success of the company and the sales of its balls. Moreover, the article in eMediaWire state that the balls of Storm were discounted with a "savings of over 30%". Clearly discounting sales can lead to the commercial success of a product. Lastly, the declaration discusses that the fragrance is from off the shelf products. As such, these products are being

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used for what they were intended by being added to products to make them smell good. Hence, from the above, the Declaration fails to overcome the grounds for rejection on secondary consideration.

**Conclusion**

Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address [bill.pierce@USPTO.gov](mailto:bill.pierce@USPTO.gov) or at telephone number (571) 272-4414.

For **official fax** communications to be officially entered in the application the fax number is (703) 872-9306.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.



**WILLIAM M. PIERCE**  
**PRIMARY EXAMINER**